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REFORM OF CIVIL PROCEDURE—WORLD AGITATION OF THIS REFORM.

It is not in the United States, only, that this question is being agitated, and is agitating the minds of lay and learned alike.

The whole world is discussing this problem, and in many different ways. But one idea seems to be permeating all of these discussions, viz.: How to get the cases decided according to the facts, and not according to forms and technicalities; or, in other words, how to have the real, and not a set of doctored or fictitious facts, presented to the courts for decision.

At the seventh meeting of the Association of Italian Jurists, held in Rome, October 25-31, 1911, reform of the civil procedure was one of the main themes discussed, along these lines, under the leadership of Prof. Chiovenda, of Rome.

In Germany, the discussion is quite violent. Justizrat Wildhagen (Der bürgerliche Rechtsstreit, Berlin, 1911), and Justizrat Springer (Reform der Zivilprocess, Berlin, 1911), both argue for the necessity of getting away from the "Procesztaktik"; of getting the real facts before the courts, and of getting the cases decided upon the basis of these only. Two main means are advocated: (1) The elimination of the professional lawyer as far as possible, and this in a double way, viz.: by bringing the parties directly in contact with the court from the very beginning of the action, and by adding lay judges to the courts. (2) By doing away with most appeals and higher courts, in which the facts of the case are apt to be lost sight of, and the issue decided on technical points. Special care is then to be taken in manning the trial courts with the very best material obtainable.

These ideas emanate from the Bar of Berlin, but Dr. L. v. Bar, a former judge and present professor at Göttingen has expressed his sympathy and agreement with the ideas of Springer which are a trifle less radical than those of Wildhagen.

What the Germans especially object to, is what they call "die Weltfremdheit" of the judges, whereby they mean to express that judges generally do not know much or anything about the real facts and affairs of life, but confine their knowledge to the paragraphs of the law dealing with such affairs.

At the request of the majority of the law committee of the Reichstag, the commissioner of the government has promised to introduce a bill aimed against this "Weltfremdheit." This promise was the outcome of a discussion in the committee. The majority appears to be of the opinion that all statute law should be revoked, and that this should be the contents of the first section of the new law. But in order to be sure to get the "Weltfremdheit" out of the courts, the majority appears further to be of the opinion that no "Nur-Juristen" (lawyers and nothing else) should be allowed on the bench, and as every lawyer is, if not absolutely, at least partly a "Nur-Jurist," the majority finally recommended that no lawyer whatsoever should be appointed judge. When the minority objected that among the laymen there was likely to be a number of "Nur" grocers, "Nur" plumbers, etc., the majority met this by stating that these would be preferable, anyhow, because they had not acquired the habit of forming judgments according to technical rules. The question being raised by one of the minority, whether the courts thereafter would be bound by any enacted law at all, the chairman answered that it had been unanimously settled long ago, that they ought not to be so bound.

Lawyers evidently do not form the majority in the Reichstag, or of its law committee.

Poor us. Laymen on the bench; ladies at the bar.

What are we going to do for a living?

T.

THE CONSTITUTIONALITY OF THE FEDERAL EMPLOYERS' LIABILITY ACT.

There appear to be two new things announced by the recent decision of the Supreme Court in the federal Employers' Liability Act and by intrinsic law the announcements seem opposed to one another. Moudon v. N. Y., N. H. & H. R. Co., 32 Sup. Ct. 169.

We say new things as distinguishing the opinion just rendered from that rendered when the act was held unconstitutional.

It was urged that the act exceeded the powers of Congress, in that in its abrogation of the fellow servant rule as at common law it makes the railroad liable for injury done by an employee engaged in intrastate commerce to one engaged in interstate commerce.

Justice Van Devanter states the matter thus: "The second objection proceeds upon the theory that, even although Congress has the power to regulate, the liability of a carrier for injuries sustained by one employee through negligence of another where all are engaged in interstate commerce, that power does not embrace instances where the negligent employee is engaged in intrastate commerce. But this is a mistaken theory, in that it treats the source of the injury, rather than its effect upon interstate commerce as the criterion of congressional power. * * * The present act, unlike the one condemned in Employers' Liability Cases, 207 U. S. 463, deals only with the liability of a carrier engaged in interstate commerce for injuries sustained by its employees while engaged in such commerce. And this being so, it is not a valid objection that the act embraces instances where the casual negligence is that of an employee engaged in intrastate commerce; for such negligence, when operating injuriously upon an employee engaged in interstate commerce, has the same effect upon that commerce as if the negligent employee were also engaged therein."

This reasoning leaves, we think, much to be desired in the way of fullness, but what there is of it enforces the idea, that whatever is given by way of a remedy to an employee engaged in interstate commerce is purely by way of penalty and that the act is a penal statute.

The learned justice further says congressional "power is plenary and competently may be exerted to secure the safety of interstate transportation and of those who are employed therein no matter what the source of the dangers which threaten it."

Say this is true, then it is competent for Congress to prescribe that any outsider may be liable to an action under federal law for injuring an employee while engaged in interstate commerce. If that liability is made in favor of the injured employee in such a case, instead of the employer because his interstate business is interfered with, it is as plain as may be, that the legislation would be purely penal. Does this less appear when the servant in an essentially distinct part of his employer's business injures another servant not therein employed?

If it is said the common employer is in this predicament for the exercise of his privilege of engaging in interstate commerce, does that mend the matter? In the first place, that is not a privilege Congress can deny, and, in the next place, if its exercise thus may be conditioned, to the front again comes the feature of penalty legislation.

But, as the former act was rendered unconstitutional because it attempted to regulate intrastate commerce, is there or not such regulation in making an intrastate carrier responsible for the negligence of its employee for injury done to any employee engaged in interstate commerce?

We may readily conceive that, with Congress possessed of the plenary power above spoken of, it could make any corporation or any individual liable by way of penalty to any employee of a carrier engaged in interstate commerce, but we do not understand how it can make a corporation liable for the acts of its servants, who are not officers or vice-principals, done to such employee, unless there is at least the relation

of fellow servant. This makes a new doctrine of agency which we do not believe Congress intended to establish, if even it may be thought to possess such a power under any theory of national needs.

This reasoning, however, if sound, would not invalidate the act. It would merely restrict the interpretation of its terms. In a word, the question whether an employee engaged in interstate commerce may recover from his employer, where injury arises from the negligence of another employee engaged in intrastate commerce, ought not to be deemed foreclosed.

The opinion, however, dealing with the act, as it seems to us, as a penal statute, nevertheless concludes that it supersedes the laws of the states as to rights of action by employees against railroads engaged in interstate commerce.

Here again, if recoveries thereunder are penalties, the reasoning is not logically complete. No one may attempt to deny that states may not interfere with congressional regulation of interstate commerce. But to say that, because Congress imposes on an interstate carrier liability for a penalty, thereby it meant to exclude a right of action for a wrong, even though the penalty is in favor of him, who had such right of action, is quite another thing. If both liabilities may be concurrent, why say the inference is that one excludes the other?

We admit that Congress has the power to declare, that no employee may recover under any state law or upon any theory at common law, for negligence of an interstate carrier, because that would interfere with interstate commerce, but ought it not to say so? We think it is not correct to say that the field is covered by a penalty statute with recovery under a different rule from that applied to recovery by one in his own right as between employer and employee, unless Congress specifically so declares.

It was logical, we think, for the opinion to proceed from the last-named point as it did and hold that the state courts should exercise jurisdiction in cases arising under the act.

This, however, involves more pointedly a departure from the penalty idea. It was held in Wisconsin v. Pelican Ins. Co., 127 U. S. 165, that the federal Supreme Court has no power in its original jurisdiction, where a suit is by a state to enforce a pecuniary penalty for violation of a state statute, because it is the court of "another country."

May not the proposition be turned around, when a state court is called on to enforce a pecuniary penalty arising out of regulation of interstate commerce? This journal gave its views on this subject, citing authority, in 71 Cent. L. J. 235.

We note here, that by amendment of this act in 1910, it is provided that: "No case arising under this act and brought in any state court of competent jurisdiction shall be removed to any court of the United States." We wonder if this may be the herald of some act of Congress taking away jurisdiction of the federal district court in diversity of citizenship. If state courts are presumptively impartial enough between employees and foreign corporations engaged as carriers in interstate commerce, why should they not be deemed such as to all other non-residents and as to aliens?

This clause may possibly be claimed to refer only to the right of removal as to suits of a civil nature "arising under the Constitution or laws of the United States," but the language is broad enough to forbid removal when the right to remove is based on diversity of citizenship.

If it does embrace the latter, the situation is somewhat anomalous, and is an implied recognition of the fact that in this day and time the constitutional fear that a non-resident or alien may not obtain a fair trial in a state court is wholly negligible.

Even, if the broad language should be held not to do away with removal as based on diversity of citizenship, the express vesting of jurisdiction in state courts ought to be looked on as a step towards the abrogation of that anachronism.

NOTES OF IMPORTANT DECISIONS

COMMERCE—EXCLUSION OF STATE LEGISLATION DURING POSTPONEMENT OF CONGRESSIONAL LAW GOING INTO EFFECT.—On March 4th, 1907, Congress enacted the hours of service act as to interstate railway employees, with the act to go into effect one year after its passage. In June, 1907, a law of the State of Washington regulating the hours of service of railway employees became effective. It was conceded it would be operative as to interstate railway employees, unless during the interim of the congressional act going into effect such operation would be excluded. The state court said: "It seems clear that the federal statute did not speak as a statute until after March 4, 1908, the date on which it went into effect; for if a law passed to take effect at a future day must be construed as if passed on that day, and if, prior to the time it goes into effect, no rights can be acquired under it, and no one is bound to regulate his conduct according to its terms, it is idle to say that it has the effect of a statute between the time of its passage and the time of its taking effect. A statute cannot be both operative and inoperative at the same time. It is either a law or it is not a law; and, without special words of limitation, when it goes into effect for one purpose, it goes into effect for all purposes."

But Chief Justice White says: "But we are of opinion that this view is not compatible with the paramount authority of Congress over interstate commerce. It is elementary, and such is the doctrine announced by the cases to which the court below referred, that the right of the state to apply its police power for the purpose of regulating interstate commerce in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject, or manifests its purpose to call into play its exclusive power. This being the conceded premise upon which alone the state law could have been made applicable, it results that as the enactment by Congress of the law in question was an assertion of its power, by the fact alone of such manifestation that subject was removed from the sphere of the operation of the authority of the state." Northern Pacific Ry. Co. v. State of Washington, 32 Sup. Ct. 160.

This argumentation seems not convincing. Congressional silence is, of course, the only opportunity for state action. But what is silence? Naturally the answer would be the absence of congressional law presently covering what the state is attempting. Suppose, for example, Congress were to postpone an act going into effect ten years, would that so much advertised "twilight zone" be existent all of that time?

This case concerns a state law coming into effect during the interim Congress has prescribed for its speech to have effect—or for its "silence" to be broken. Would the reasoning used by the Chief Justice extend to displacing state law? Or might that be looked upon as a condition existent during the time in which the interstate carrier must adjust itself so as to prepare to comply with the act of Congress? To say so, assumes, without any proof, that interstate carriers could more readily adjust their affairs to meet congressional requirement without state regulation than with it. In other words, it assumes that state law is unduly hampering interstate carriers.

Notwithstanding that this is merely regulatory legislation, yet it does not regulate until it goes into effect, and until it does go into effect, Congress is silent, according to the usual way in which a law-making power is silent until its speech is to take effect.

To talk about congressional power illustrates nothing. No legislation to take effect in the future can ever be of any worth unless there is power to enact it. It was just as easy for Congress to declare an interregnum as to omit to declare one. That it did so omit ought to be deemed its choice.

PARTNERSHIP—RIGHT OF ADMINISTRATOR OF DECEASED LAW PARTNER TO SHARE IN CONTINGENT FEES.—In Causal v. Cummings, 32 Sup. Ct. 83, the Court considered the question whether the administrator of a deceased member of a law firm was entitled to his full proportion, according to the partnership articles, of contingent fees collected after his death, notwithstanding additional services performed by the survivor.

Mr. Justice Lamar, speaking for the entire bench, lays down the general rule in partnership matters to be, that the survivor of a firm has the duty of winding up its business without extra compensation, with exceptions to this rule under peculiar circumstances, saying there may be "a different rule (from the general rule) in cases of winding up partnerships between lawyers and other professional men where the profits of the firm are the result solely of profesional skill and labor."

Thereupon coming down to the case at bar, the learned justice distinguishes as to fees

contingent on success as follows: "This point is not involved and on it no ruling is made, because we are not dealing with questions between the administrator of the deceased and the surviving member of an ordinary law partnership, where the latter conducts to a conclusion the business of the firm, under circumstances where there may be a right from time to time to call on the client for compensation for the value of services rendered, and even though the case may be finally lost. Here the agreement related solely to a partnership in which the compensation was for success and not for the value of services rendered. Such payment was to be *in solido* and the partners agreed that the fees should be divided *in solido*."

This is a close refining, if the exception as to law firms is a well recognized one. There is just as much expectation of beneficial results from professional skill and labor whether a fee depends on success as where it does not. And why everything should not be done properly and with greatest diligence and professional ability in the one case as in the other, in winding up the business, it is hard to see. To extend the principle to its logical end it would seem right to claim that for any lack of professional skill on the part of a survivor the estate of the deceased partner should also be liable if the survivor is.

It was insisted also in this case that the survivor "paid out large sums for necessary expenses, and, in spite of probable failure, rendered valuable services, which finally earned the fees now to be divided." But the court held that no extra compensation because of the sole risk and services was to be allowed.

It looks almost like this ruling has in it an undercurrent of prejudice against contingent fees, and, certainly, if such are not frowned upon, the ruling is something of a discouragement that might operate to the damage of clients' interests. If the decedent member were mainly relied on by the client, he ought at least to have the right to have another called in to assist the survivor, and if he foregoes this right the extra service the survivor gives ought to entitle him to extra compensation. The very gist of a contract of this kind being for personal skill and labor, the mere fact of how it is to be paid for and upon what condition ought not to make the difference that is ruled to exist.

SHOULD SCIENCE RATHER THAN PRECEDENT DETERMINE THE LAW—COMMON LAW AND CIVIL LAW CONTRASTED BY A JURIST FAMILIAR WITH CONTINENTAL PRACTICE.

You have inquired of me how we regard precedent in comtinental jurisdictions.

I suppose that the proposition, that the decisions of the courts shall not be taken as binding precedents, but as settlements of each individual case only, must to you appear almost "comprehensible."

You will ask me: By what, then, are you guided in finding out what the law is. My answer to this is: By the statutes, the decisions of the courts,, and by the writings of learned men, or as we say, by science. Then you are guided by decisions anyhow? Of course we are, but not in the same manner as you.

We acknowledge that the decisions show how the law is now applied, and that customary law may be founded upon decisions of the courts; but in order to establish such a custom, it is not enough that there should have been one or two decisions of the supreme court, or even any number of decisions, if the law laid down thereby is not generally accepted as sound by the profession and the "science."

For instance: In the law of torts you have a certain rule of law known as "the fellow-servant-rule." This rule is not founded on any original statute, nor is it built upon any recognized principle of law whatever, but was arrived at some seventy years ago under the influence of certain economical purposes and exigencies, and was defended by certain flimsy fictions and presumptions. It was bad in law when first established, and has always remained so, and can never become otherwise, and this, I think, is now recognized by all thinking American lawyers, but here it is, in absolute force, based simply on a long line of decisions, and will be followed even by a court of seven judges, every one of which is convinced of its unsoundness.

And here comes the most remarkable result of making the court lawgivers; they have the power to legislate where no express statute is in their way; by interpretation they can change the meaning and intent of specific statutes, but their own law-making, when they have followed it for a certain time, they cannot change or alter. Now courts were established in order to settle specific quarrels of men, and all courts, even those of America, are careful never directly to decide any more than the specific case requires and demands, and still these decisions of specific cases are taken as the expressions of the law generally.

How has this come about? As far as I can see, by the habit of writing opinions. I do not mean to say that a judge should not give reasons for his decisions, but he should avoid as the plague all dicta, not to speak of obiter dicta. Let him forego the temptation to show his learning. By this kind of opinion-writing he only gets himself and the rest of the community into hot water.

I must be allowed to express the opinion that comparatively few judges are by nature qualified to write treatises on law; and even if they are, they do not have the training to enable them to do it well; and even should they have the training, they do not have the time to make their treatises sufficiently broad, full and comprehensive. To be a competent teacher, even of one branch of law, is enough to take up a man's whole time and energy, and it cannot be expected of any man, that besides spending most of his days in trying and deciding cases, he should in addition be able to be a competent and authoritative instructor in all the branches of the law.

Take the enormous number of printed English and American decisions; you find them to be a store-house of a prodigious amount of legal learning and sound reasoning, but you also find them to contain no end of hastily and poorly considered opinions and declarations about law. True, in course of time the chaff becomes separated from the wheat, but generally not until the generation to which this law was applied has gone to its grave and beyond the reach of any human law. And it generally requires legislative enactment to do the weeding. In the meantime, the poor judge-made law has exactly the same force as the good, and has, as said before, a quite extraordinary vitality and tenacity of life.

Now, judges of other countries are not more likely to make right decisions than those of England and America, but they do not set themselves up as professors of law, and they do not claim that since they decided in a certain case the law to be such, it is and must remain such, until the law-giving power changes it. Or, expressed in another way, the courts do not undertake to establish legal principles; this they leave to the legislatures and to science. They themselves are content to apply the principles so established, and if it can be shown to them that they have made a wrong application of them, they do not hesitate to "overrule" themselves, even if the error had been committed a hundred times.

Naturally, we look to the decisions of our appellate courts for guidance, but in the application of principles only, and it does not become necessary for us, in order to convince a court, to rake up all the decisions rendered upon a similar question within the last hundred years or so; we do not cite decisions to show the court what the law is, but to guide the court in applying it.

The Science of Law Rather Than its Precedents Should Control.—"Now, you will at once take exception to the importance given by me to science. 'Science,' as far as law is concerned, you are apt to look upon as a lot of 'glittering generalities,' something upon the plane of the writings of the old exponent of *lex naturae*. Treatises on the philosophy of law are still written, and serve some useful purpose as guides for legislators and a help to scientific writers on positive law in keeping their definitions pure and complete. When what I may call independent treatises on law, are

written in England and America, they are invariably of this character, and of scientific books written in other languages, naturally only those of such general scope are translated into English.

"All other English books on law are mere compendiums, never undertaking an independent examination of the law in force, but aiming only to set forth, in an abbreviated form, the definitions of the law as laid down in the decisions of the courts; they are called textbooks, and are nothing else.

"Suppose you take up a continental 'text-book' on contracts, for instance; you will find it systematic in its arrangements, and that it is an independent treatment of the whole subject, with reasons and arguments for the opinions stated; you will find cases cited, but not in order to show what the law is, but as illustrations; if they agree with the writer's opinions, well and good; if not, the author undertakes to show wherein they are wrong, and why, and does not let the fact that a certain court has been of a different opinion force him to abandon what in his opinion is the proper interpretation of the law.

"This difference is partly caused by the different purposes for which lawyers are trained and faculties of law maintained. In England and America, law schools are almost exclusively for the training of practising lawyers, and almost all their graduates go into active practice as attorneys. But on the continent, the administrative offices absorb a great many lawyers, and the Bench is to a great degree recruited from such; that is, many lawyers will, after a few years at the Bar, enough to teach them the value of preciseness and orderly procedure, enter the administration, either in the central offices or in its branches throughout the provinces.

"An administrative officer deals with law just as much as a lawyer or a judge, but with this difference, that while the latter are concerned with individual cases between individuals, the former has more to do with the law and its applications as they affect the people of his district, or a certain class of them, generally. For this reason they are more concerned about general principles and their equitable application than are men trained through actual lawsuits, and they learn, not to put too great value on fixed forms and technicalities. They are not concerned about the winning of a case for an individual. A science of law becomes of more value to them than to the mere trial lawyer, for whom the main point is, and must be, to win his client's case.

"There non-technical men coming on the Bench, naturally influence their colleague brought up at the Bar in the direction of less technicality, and the full Bench so modified again reacts on the Bar, and makes it more inclined to make its fights on the merits of its own cases than on the technical weaknesses of those of their opponents. The whole procedure thereby becomes less technical.

"But looked at in the proper way, the habit of endowing decisions of the courts with binding force for the future is also a technicality, or, to use another expression, it is purely dognatic. A certain thing is declared to be right, because so and so has said it is; and while by the very nature of the judicial power and its raison d'etre, the man who said so had the authority and was clothed with the power to determine what was right in the case brought before him, he had no inherent or delegated right to determine and declare what should be right in general for the future.

"If jurisprudence is to be a science, it cannot be bound up in dogmas; no other science is so handicapped, and if it were, it would cease to be a science. Take medicine, mathematics, physics, or any other science; nothing is accepted because somebody invested with official authority has said so, but only when it has been proven to the satisfaction of the profession to be true and correct. That, however, does not alter the fact, that if you get hold of a doctor who is not up to the best meth-

ods for amputating limbs, where such an operation is to be performed, you are the one to suffer the consequences; but even if he be the highest medical authority of the state, his faulty methods do not thereby become binding on other doctors and laymen. In the same way in law; if you are unlucky enough to have your case finally decided by a court deficient in the proper application of the law, you must suffer the consequences, but there is no reason, why on this account all other and future litigants about similar points should suffer in the some manner.

"There is a danger in leaving the ultimate fixing of legal principles with an institution which has the immediate power of enforcing its opinions. Let me revert to the 'fellow-servant-rule.' There is a generally acknowledged principle of law to the effect, that a man takes the risk of his undertakings, or otherwise expressed, that he who takes the profits also takes the risk. Now this was perverted into the saying, that a man takes the risk of his employment. If this saying had not come from a court with authority to enforce its decisions, does anybody here believe that the theory would have survived to this day, or even would have shown any vitality at all? The very term employment eliminates the possibility of profits, and thereby the foundation upon which the risk is placed.

"If a jurisconsult should have advanced the fellow-servant theory, it would have been analyzed and torn to pieces by other jurisconsults in no time, but coming from a court whose decisions were considered binding, it obtained an artificial value and bad law is, without doubt, set before our force, under which generations of employes have suffered. In Germany, such a theory never was advanced; in France the courts showed a tendency to adopt it, but it was not accepted as law, and within a few years they abandoned it.

"But, you will say to me, if your theory as to the binding, or rather non-binding force of precedents were accepted, what a deplorable state of uncertainty the law would fall into; if everybody is allowed to interpret the law to suit himself, there will be no law at all but simply legal anarchy. If we therefore have to have a final authority to tell us what the law is, you believe that the courts are without doubt the safest repository for such authority. They deal, not with fancied cases, but with actual questions which have arisen in practical life between distinct persons. Not considering the judge's oath of office, he cannot avoid feeling the actual, present and direct responsibility for his decisions, while the mere writer on law has no responsibility or only a very remote one, at most. But do not misunderstand me. The civil lawyer does not believe that the science of jurisprudence should sit at the feet of the courts and merely tabulate their decisions; but neither does he believe that the courts should be mere handmaidens of science and simply take their orders from it. He believes that they should supplement each other, the courts to look to science for general principles and definitions; science to look to the courts for the necessary correction of principles and definitions too broadly stated.

"No dictum of science should be accepted which practice cannot assimilate; no dictum of the courts to be considered final, unless accepted by science as a correct application of sound principles. This is the way all other sciences proceed; in all of them there are two or more schools, the main ideas of which get bandied about turned inside out, argued and demonstrated, until finally an agreement is reached, which is the correct one, or what part of each is sound. In other words, each final doctrine as tabulated, is the result of the freest discussion. But in your way of treating the science of law, you may often see stated in one of your text books, that such and such an opinion probably is the sounder one, but that the opposite theory has been followed so long that it cannot now be altered. This is the abdication, not only of all science, but of common sense.

"During your civil war, a very large

number of amputations were made by, or under the authority of the highest surgical authorities of the land, and a very long and consistent list of precedents established, how such amputations should be done. Would anybody argue from this, that consequently antiseptic methods in surgery could not be introduced until a law to that effect had been passed by congress.

"As a matter of fact, I do not hesitate to state, that there is more certainy about the law in continental countries than in either England or America. Each new point raised, be it by a case actually tried, or by a new condition otherwise arisen, or by a new statute passed, becomes at once a matter of examination and discussion within the profession and in its schools, which discussion generally leads to a final agreement about the proper treatment of the point. It is more than unlikely that the courts, after such an agreement has been reached, should disregard it in their future decisions. For this reason, we are generally in a position to tell a client what the law is about a certain point, even before it has been decided by the courts, or at least to give a distinct opinion and advise about it, because it probably has been discussed from all sides in the juridical literature; and even if this should not have been the case, we have been so trained in general principles and in their application that we do not find it very difficult to give a reasonably certain answer to a legal question, and it is very seldom that we have to give an opinion of the kind you are so often forced to give, consisting of citations from any number of more or less conflicting cases, the client—under your direction—to take his choice.

You may think that we do not study cases as much as you do, and that such study is not of the same importance to us, but in this you are mistaken; we study them very carefully, but in a somewhat different spirit, not for the purpose of piling up a large amount of authority, but in a critical and analytical spirit, in order to have authorities to cite of which we are sure, that they have properly applied the right principles, and in order to help us apply the principles to the case before us. Very much courts for their adoption, but still, I believe that you beat us in this. I may have received a wrong impression, but I have gained the opinion that your lawyers are so solicitous for their reputation as attorneys who can win cases, that they sometimes, I may say often, lose sight of their reputations as jurists. AXEL TEISEN.

Philadelphia, Pa.

LIFE TENANT—ENCUMBERING CORPUS.

MISSOURI CENTRAL BUILDING & LOAN ASS'N v. EVELER et al.

Supreme Court of Missouri, Division No. 1. Nov. 29, 1911.

141 S. W. 877.

Where an estate was devised to one for life, with remainder to his children, the life tenant could not, by deed of trust executed to secure money to improve the land, incumber the interest of the remaindermen, even though he represented himself to own the fee; for the mortgagees had constructive notice of his title.

GRAVES, P. J.: (1) Cast upon demurrer below, the plaintiff stood upon its petition, and after such adverse judgment upon the demurrer brings the case here by appeal. Learned counsel for the plaintiff has made a very concise statement of the case, which statement is adopted in the brief by learned counsel for the defendants. We shall likewise adopt such statement. In words, it is as follows:

"The petition alleges, and the demurrer admits, that in the year 1901, Herman Eveler, being in possession of a part of certain inlots in Jefferson City, Missouri, described in the petition, applied to plaintiff for a loan of $800 on said property, representing himself to be the owner thereof in fee simple; that in the year 1903, under the same representations, he applied to plaintiff for a further loan of $600 on said property, and in the year 1904, under like representations, he applied to plaintiff for a further loan of $400 on said property; that plaintiff, believing said representations of ownership to be true, and believing that the said Herman Eveler was the owner, in fee simple, of the property, granted the loans thus applied for, amounting in all to $1,800, and took the said Eveler's notes for said amounts of $800, $600, and $400, said notes being secured by deeds of

trust on said property, executed by the said Herman Eveler and his wife, defendant Nellie A. Eveler; that all of the money so loaned by plaintiff to the said Herman Eveler was used by him in making lasting and permanent improvements on said property, which resulted in greatly increasing the rental and market value thereof; that the improvements so made consisted in the building of another story on the two-room brick house theretofore standing on the land, and in erecting on the same land a seven-room, frame, two-story building; the former being occupied by the defendants as a home, and the latter being rented by defendants at $29 per month. The petition further alleges that Herman Eveler died in May, 1907, leaving as his only children the minor defendants, and his widow, defendant Nellie A. Eveler, and that since his death defendants have enjoyed the rents and profits of all the buildings erected with the money so borrowed from plaintiff as aforesaid; that no payments have been made on said loans since the death of the said Eveler, and that there is now due plaintiff on said loans the sum of about $1,380.70; that it now appears that the said Eveler's representations of fee-simple title in himself were untrue; that by the terms of his father's will, under which he was in possession and claimed said property, the said Herman Eveler never had the fee-simple title to said property, but had only a life estate therein, and that on his death the fee-simple title to said property vested in Eveler's children, the minor defendants herein. The petition further states that defendants refuse to make any further payments upon the loans; that plaintiff is remediless at law, and prays the court in the exercise of its chancery powers, to ascertain the amount yet due plaintiff, to declare such amount a lien upon the improvements, and to adjudge that the frame building now standing upon the minor defendants' land be subjected to the payment of plaintiff's debt in such way as to the court may seem best; and for such other proper and equitable relief as to the court may seem proper. Defendant Nellie A. Eveler demurred to the petition, on the ground that she was not a necessary party defendant, and the minor defendants demurred, on the ground that the petition did not state facts sufficient to constitute a cause of action. The trial court sustained the demurrers, and, on plaintiff's declining to plead further, rendered judgment for defendants, whereupon plaintiff duly appealed to this court."

The facts disclosed by this record show a hard case for the plaintiff, but has it any redress in a court of equity? We think not. The good faith of plaintiff in loaning this money may be conceded, and by the demurrer is conceded, yet that does not avail the plaintiff in a case environed as is this case. With the money borrowed, the deceased life tenant made valuable improvements upon the lands, but under the facts this cannot avail as against these remaindermen. The father, the life tenant, could not by trust deed incumber the estate of these minors. His conveyance conveyed no more than the estate which he held, i. e., the life estate. This is the legal status, and, in our judgment, equity cannot relieve the legal situation. If life tenants could borrow money, whether upon deeds of trust or otherwise, with which to improve the estate of remaindermen, and the parties loaning the money could show that it went into actual improvements, and for that reason be adjudged a lien upon the property or any part thereof, estates in remainder would certainly be left in a precarious situation. Remaindermen would be at the mercy of the life tenant. Such would be a dangerous precedent, and one which we do not feel called upon to set.

(2) When the plaintiff loaned these sums of money to the life tenant, it did so with the constructive notice imparted by the will of the life tenant's father. That the title was defective could have been ascertained and this lawsuit averted is evident. The situation is harsh, but was not made by these defendants. The widow of the life tenant has no interest in the controversy, and as to her the demurrer was certainly well taken.

(3) Going now to the remainderman, we take it as well settled that a life tenant cannot charge the corpus of the estate with improvements. What he himself cannot do cannot be done by those from whom he borrows money for that purpose.

In a recent Kentucky case (Frederick, Jr., v. Frederick's Adm'r, 102 S. W. 859, 31 Ky. Law Rep., loc. cit. 584, 13 L. R. A. [N. S.] 514), it is said: "It is a familiar rule that the life tenant cannot charge the corpus of the estate with improvements, and that he is not entitled to compensation for the enhancement of the property by reason of his improvements. Henry v. Brown, 99 Ky. 13, 34 S. W. 710. We do not see that there is anything in this case to take it out of the rule. If the improvements had been made by Mrs. Frederick, the life tenant, they would not be a charge upon the estate. They are certainly no more a charge upon the estate when made by her husband. * * * It is a sound rule of public policy which denies the life tenant the power to charge the estate for his improve-

ment, although they may enhance the value of the property."

The above case is also reported in 13 L. R. A. (N. S.) at page 514, where it is made the subject of a very lengthy note, in which are collated numerous authorities. The learned annotator thus announces the general rules: "It is the general rule that a life tenant has no right to recover from the remainderman for improvements made during the continuance of the life estate." "And it is also the well-established law that no charge upon the lands or the inheritance can be made for such improvements." "The court, in Caldwell v. Jacob, supra [22 S. W. 436, 27 S. W. 86, 16 Ky. Law Rep. 21], gives two reasons for this rule: First, preventing the life tenant from consuming the interest of the remainderman by making improvements that the remainderman cannot pay for, or that he does not desire; second, improvements are made for the immediate benefit of the life estate, and usually without reference to the wishes of the remainderman."

In 16 Cyc. p. 631, the rule is thus stated: "If the life tenant himself makes permanent improvements, it will be presumed that they were for his own benefit, and he cannot recover anything therefor from the remainderman or reversioner. Exceptions to this rule have been made in the case of a life tenant who completes a dwelling-house begun by the donor of the estate, or who makes improvements upon mining property to prevent its forfeiture. A life tenant who makes improvements, believing himself to be the owner in fee, is not entitled to the benefit of the betterment or occupying claimant laws."

(4) There are exceptions to these general rules, as will be disclosed by the collation of cases under the Frederick Case, supra, in 13 L. R. A. (N. S.) p. 514 et seq., but the facts of this case do not bring it within the exceptions found in the cases there cited. In the case at bar, the remaindermen were all infants. They could not assent to the contract made by their father, the life tenant, and they are in no way estopped by their own conduct.

(5) It is also the general rule that one holding under the life tenant is entitled to no more consideration than the life tenant. Vide authorities collated in note to the Frederick Case, supra, 13 L. R. A. (N. S.) loc. cit. 516. Among the cases there cited is the case of Schorr v. Carter, 120 Mo. 409, 25 S. W. 538. In the Schorr Case, the action was one in ejectment by a remainderman. Defendants had possession and claimed title through a conveyance from the life tenant. It was urged that defendants were at least entitled to recover for repairs made to the property, and have such offset against the damages for the unlawful holding. This court said: "Defendants were not entitled to a reduction of damages for outlays expended in the preservation of the property, and the court committed no error in excluding all evidence with respect thereto."

With the general trend of the authorities as we find them, we are unwilling to establish a precedent in this state, by which the interests of minor remaindermen may be frittered away by a life tenant. Plaintiff, by the exercise of that care which is required of one taking a conveyance of real estate, could have discovered the exact status of the title in this property. Defendants did nothing to induce action upon part of plaintiff. They were minors, and could do nothing which would bind them.

The judgment of the trial court is right, and is therefore affirmed. All concur.

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NOTE.—*Charging Improvements by Life Tenant Upon the Corpus.*—The authorities show, we think, that the principal case merely announces a general rule and regards it as subject to no equitable considerations. We append a few cases, some of which show this rule is subject to exceptions, always provided that the exception allowed does not take from the remainderman any of his original rights. They merely do not enforce the rule that building on another's land makes the improvement a part of that land.

The Kentucky case referred to by the principal case showed the life estate was sold for reinvestment and it was claimed by mortgagee that in the sale the property by its enhanced value sold for as much more as was the debt, but the court ruled that: "It is a sound rule of public policy, which denies to the life tenant the power to charge the estate for his improvements, although they may enhance the value of the property."

In a later case this court held very strongly that it was the life tenant's duty to make all ordinary, reasonable and necessary repairs and, for failure so to do, the remaindermen could require him to do so and subject his interest to the costs thereof, or his general estate sued for after his death. Prescott v. Grimes, 143 Ky. 191, 136 N. W. 206.

In another case from this court where there was an indivisible interest in property which had been improved by the owner, believing himself the sole owner, the property was ordered sold and the life tenant's interest was to be in the remainder after deduction from the price the amount it had been enhanced in value. Ratterman v. Apperson, 141 Ky. 821, 133 S. W. 1005. The court reasoned that "a joint owner believing himself the owner of the whole property, improving it," this enhanced value will be allowed him, if this can be done without injustice to his co-tenant. This seemed not affected by the fact that the interests of his co-tenants were for life and there was a remainder, constituting thus an

exception to the rule announced in the case referred to by the principal case.

In an earlier case this court admitted another exception. Thus it ruled that a life tenant would not be permitted to improve the estate and charge it to the remainderman or make that a lien on the estate, but where the chancellor erroneously takes an infant life tenant's means and expends it upon improvements and the life tenant's money or its value can be restored to him and the remainder interest with its natural increase can be preserved, a court of equity will protect the rights of all parties and preserve each his own estate. Caldwell v. Jacob, 16 Ky. L. R. 21, 22 S. W. 436.

In re Jenks, Petitioner, 21 R. I. 399, 45 Atl. 580, a will provided that the widow should have "all the rest, residue, etc., for her own use and benefit during life, and at her decease, whatever may remain of my estate, both real and personal," to certain remaindermen. The property was the testator's homestead estate, consisting of a house and lot of land and some household furniture. The widow having no means of support, except from occupation of the house and lot, caused two houses to be built on a portion of the land, giving a mortgage covering the houses and the land upon which they stood. The money thus raised was used in building the houses and it was agreed they increased the value of the real estate to the amount of the mortgage. In sustaining the mortgage as a valid lien on the land and improvements, the court said:

"Where there is no express power to sell, but only a power to the life tenant to use the estate for her own benefit, it is held such a power gives the right to mortgage," citing Swarthout v. Ranier, 143 N. Y. 499. The court further said: "Moreover, in the present suit, the widow, instead of selling and appropriating the proceeds, has improved the property to the full value of the incumbrance, and secured her support in that way. The value of the estate of the remaindermen is not diminished. We think, therefore, in these circumstances, that the mortgage is an equitable incumbrance on their estate by reason of their receiving for it an equivalent in the value of the property."

The Swarthout case, *supra*, merely showed more plainly than the Rhode Island case, the intent of the will as allowing the widow to use the corpus, and the mortgage was ruled to be presumptively valid.

In Stevens v. Melcher, 152 N. Y. 551, the rule which the principal case announces and abatement from its strictness were thus spoken of: "At common law a tenant in common or a tenant for life who had made permanent improvements, as distinguished from ordinary repairs, upon the common property of his co-tenant or remainderman, cannot recover his expenditures for that purpose. Courts of Equity, however, were more liberal, adopting the principle that a party who asks for equitable relief will be required to do what is equitable himself, and where special circumstances give rise to strong equitable rights, relief may be afforded."

It is seen from Ratterman v. Apperson, *supra*, that the Kentucky court admits the propositions above stated as to a co-tenant, but not as to a remainderman, unless under some such strong circumstance as in Caldwell v. Jacob, *supra*.

The New York case, *supra*, thought there was an exception where the life interest was in a trust estate, for it said after reciting facts showing the necessity of permanent improvements on property held in trust for the life of a *cestui que* trust: "It will thus be seen that something had to be done, if these lots were to be preserved for the estate. A situation was presented very different from the cases where the real estate has produced an income sufficient to maintain it, although small and leaving but little profit for the life tenant or the beneficiary of the trust." It was said the improvements cost $130,000, and added at least $90,000 value to the estate. The court said: "There are many cases in the books in which relief of this character has been refused; many others in which it has been granted. Each case is largely dependent upon the circumstances and special equities surrounding it, which may bring it within, or distinguish it from, general rules. After careful examination of the authorities, we have reached the conclusion, that in this case Mrs. Stevens' equities are such that her claim should have been allowed, and the ninety thousand dollars charged to the trust estate."

Kilmer v. Wuchner, 79 Iowa 722, 45 N. W. 299, 8 L. R. A. 289, 18 Am. St. Rep. 392, recognizes the equitable rule above spoken in its application to a co-tenant there not being in the case any remainder interest involved. It was said: "Appellants have not been injured by the making of the improvements and they have no just claim to any portion of their value."

In Hibbert v. Cooke, 1 Sim. & Stu. 552, the tenant for life was allowed to complete a mansion begun by the testator and make the real estate chargeable therefor, such completion being for the manifest benefit of all concerned. See also Dent v. Dent, 30 Beav. 363; Ex parte Palmer, 2 Hill Eq. 215.

The principal case and the Kentucky case go on the theory that the corpus must not be consumed by improvements by the life tenant and which the remainderman might not wish. Equity, however, has allowed recovery only when the estate of the remainderman would not be diminished from its value had the improvements not been made. Where is the danger to remaindermen under such a rule and why is the reverse thereof not inequitable?

C.

BOOK REVIEWS.

HOCHEIMER'S MANUAL OF AMERICAN CRIMINAL LAW.

This book in a single volume of some 300 pages is by Mr. Lewis Hochelmer of the Baltimore Bar. Its preface states that its plan "is that of a compendium or summary of the whole body of the criminal law—the substantive law and the law of procedure."

To realize that plan in a book of these dimensions is certainly to work out a great achievement, and wise is one to know he has accomplished—or as the author would say in his orthographic style accomplisht—it.

The book has much merit. Especially does

it possess the merit of stating propositions clearly and succinctly. It is too sparse, however, of authority in some matters and avoids, perhaps, too much the citation of cases, when it confines authority to a single case.

As an example of its restraint in citation of authority see Section 68 on "Asportation" where it tells of circumstances as or not amounting to that and where it gives cases it either gives one case or not more than two, and assumes the proposition foreclosed.

For the student the text is rather scant; for the practitioner it lacks cases to support it. Nevertheless the book, as we have said, is meritorious—chiefly, we think, for its terse formulation of propositions. But it is not a philosophical treatise.

The book is bound in cloth, printed in clear, readable type and comes from Press of King Brothers. Baltimore, 1911.

ARIOS' THE PANAMA CANAL.

This book representing "a study in International Law and Diplomacy." by Mr. Harmodio Arios, B. A., LL. B., is one of the series of Monographs in "Studies in Economics and Political Science," edited by the Hon. W. Pember Reeves, Director of its London School, being number 25 of such monographs.

The author traces the attitude of our government down from 1823 regarding an interoceanic canal. He discusses the events leading up to the Clayton-Bulwer treaty and some canal being open to the world and the changed attitude of the United States in that in striving to obtain a kind of supremacy or political control over such a waterway.

The Monroe Doctrine, of course, comes in for extended notice in these pages and our government's guarantee of neutrality in that zone. The Clayton-Bulwer treaty being finally superseded by the Hay-Pauncefote treaty in 1901 the ideas of the United States found free play and negotiations with Colombia began and the chapter which shows how the United States forced its will on that country seems not one an American might be proud to point to. Its justification, if it may be justified, is in the fact, that this movement of civilization and progress should not wait on Colombia, and the only serious diplomacy in the whole matter was with England as a nation to the fore, considered, however, to really represent the world other than the United States.

The author's conclusion is that, from the history of negotiations preceding the final steps to the beginning of construction, neutralization applies, because there is a general interest among the nations of the globe, putting the canal under the domain of International Law. This should be one of the highways of the world under that law. What will be inconsistent with that effect may arise as acts present themselves in regard to control of that highway.

This little book of 150 pages of text is an interesting study gotten up in attractive style in cloth cover and comes from P. S. King & Son, Orchard House. Westminster. London, 1911.

CORAM NON JUDICE.

REGNAL YEARS OF THE KINGS OF ENGLAND

The Central Law Journal being used by so many of our subscribers as a book of reference, and inquiries having been made from time to time of the regnal years of certain English sovereigns, we have thought it wise to append here a table giving the regnal years of the Kings of England, to which reference can be made when occasion requires.

Sovereign	Reign Began
William I	Oct. 14, 1066
William II	Sept. 26, 1087
Henry I	Aug. 5, 1100
Stephen	Dec. 26, 1135
Henry II	Dec. 19, 1154
Richard I	Sept. 23, 1189
John	May 27, 1199
Henry III	Oct. 28, 1216
Edward I	Nov. 20, 1272
Edward II	July 8, 1307
Edward III	Jan. 25, 1326
Richard II	June 22, 1377
Henry IV	Sept. 30, 1399
Henry V	March 21, 1413
Henry VI	Sept. 1, 1422
Edward IV	March 4, 1461
Edward V	April 9, 1483
Richard III	June 26, 1483
Henry VII	Aug. 22, 1485
Henry VIII	April 22, 1509
Edward VI	Jan. 28, 1547
Mary	July 6, 1553
Elizabeth	Nov. 17, 1558
James I	March 24, 1603
Charles I	March 27, 1625
Charles II	*Jan. 30, 1649
James II	Feb. 6, 1685
William and Mary	Feb. 13, 1689
Anne	March 8, 1702
George I	Aug. 1, 1714
George II	June 11, 1727
George III	Oct. 25, 1760
George IV	Jan. 29, 1820
William IV	June 26, 1830
Victoria	June 20, 1837
Edward VII	Jan. 22, 1901
George V	

*The interregnumn of the Commonwealth from Jan. 30, 1649 to May 29, 1660, was after the restoration was included in the reign of Charles II.

BOOKS RECEIVED.

Hopkins' Law of Personal Injuries. Volumes 1 and 2. The Law of Personal Injuries and Incidentally Damage to Property by Railway Trains. Based on the Statutes and Decisions of the Supreme Court and of the Court of Appeals of Georgia, Revised and Enlarged edition. By John L. Hopkins. Price, $12.00 for two volumes. Atlanta, Ga. The Harrison Company. Review will follow.

HUMOR OF THE LAW.

Village constable (to villager who has been knocked down by passing motorcyclist)—"You didn't see the number, but could you swear to the man?"

Villager—"I did; but I don't think 'e 'eard me."—Punch.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Accord and Satisfaction**—Disputed Account.—Where there was a controversy between parties as to the amount due on an account, the creditor's acceptance of a check, stating that it was in full satisfaction for all demands, works an accord and satisfaction.—Olson v. Burton, Tex. 141 S. W. 549.

2. **Adverse Possession**—Common Source of Title.—Where the common source of title conveyed lots to plaintiff and defendant in 1904, describing the lots by number according to a plat, neither party could have acquired title to an adjoining strip by adverse possession.—McCoy v. Witten, Mo., 141 S. W. 588.

3. **Amicus Curiae**—Want of Service.—The court may consider a suggestion of an amicus curiae that there has been no valid service against defendant.—Chicago, R. I. & P. Ry. Co. v. Anderson, Tex., 141 S. W. 513.

4. **Banks and Banking**—Delegation of Authority.—A cashier of a bank cannot delegate to an officer of another bank authority to accept drafts in such cashier's name.—United States Nat. Bank of Vale v. First Trust & Savings Bank of Brogan, Or., 119 Pac. 343.

5.——Fraud.—One induced to purchase bank stock by fraudulent representations may recover the purchase price and enforce an equitable lien in case he can trace the money or property paid, and identify the same after it passed into the hands of the bank.—Burleson v. Davis, Tex., 141 S. W. 559.

6. **Bankruptcy**—Assignment of Claim.—Where a provable claim existed at the time a bankruptcy petition was filed, a subsequent assignment thereof vested the assignee with a right to intervene in a bankruptcy preceeding.—In re Fitzgerald, D. C., 191 Fed. 95.

7.——Exemptions.—The title to property of a bankrupt which is generally exempted by the law of the state of his domicile remains in the bankrupt and does not pass to his trustee.—In re Cale, C. C. A., 191 Fed. 31.

8.——New Promise.—By a debtor's discharge in bankruptcy, he becomes civiliter mortuus as to all dischargeable debts, though his moral obligation, coupled with an antecedent valuable consideration, will support an unequivocal new promise to pay.—Anthony v. Sturdivant, Ala., 56 So. 571.

9. **Bills and Notes**—Evidence.—Where the note expressly stated that all of the signers were principals, it cannot be shown by parol that two of them signed as sureties.—Stephenson v. Joplin State Bank, Mo., 141 S. W. 691.

10.——Innocent Purchaser.—An innocent purchaser for value before maturity of a note from an indorsee having notice of a defense held entitled to enforce the note.—Snead v. Barclift, Ala., 56 So. 592.

11.——Relationship of Signers.—That the payee of a note knew that two of the other persons who signed as principals were, as between themselves, sureties for the other signers held not to make them sureties as to the payee.—Stephenson v. Joplin State Bank, Mo., 141 S. W. 691.

12. **Brokers**—Procuring Option.—Where a broker, employed to sell property, only procured an option from the proposed purchaser, he was not entitled to commissions.—Pehl v. Fanton, Cal., 119 Pac. 400.

13. **Building and Loan Associations**—Charter Power.—The officers and directors of a building and loan association have only those powers granted by statute, charter, and by-laws, or are incident thereto, and may not exercise any others.—Home Building & Loan Ass'n. of Joplin v. Barrett, Mo., 141 S. W. 723.

14. **Carriers of Live Stock**—Watering Stock.—A carrier of live stock must afford proper facilities for watering the stock.—Harden v. Chesapeake & O. Ry. Co., N. C., 72 S. E. 1042.

15. **Carriers of Passengers**—Reasonable Care.—It is the duty of a carrier to take reasonable precautions that passengers be not injured on the platforms while in the exercise of reasonable care.—Drummy v. Minneapolis & St. L. R. Co., Iowa., 133 N. W. 655.

16. **Certiorari**—Supervisory Jurisdiction.—The circuit court has supervisory jurisdiction by certiorari over the proceedings of a city council in a contest over the election of a member.—Taylor v. Carr, Tenn., 141 S. W. 745.

17. **Commerce**—Interstate Transactions.—Where it is contemplated by the parties to a contract that, as a part of the transaction, goods are to be shipped from one state to another, the transaction involves interstate commerce.—Sioux Remedy Co. v. Cope, S. D., 133 N. W. 683.

18.——Intoxicating Liquors.—Under the act of Congress known as the Wilson act, the fact that a wholesale liquor dealer produced all of his stock without the state would not

make a wholesaler's privilege tax. imposed by statute, violate the commerce clause (article 1, § 8) of the federal Constitution.—Logan v. Brown. Tenn., 141 S. W. 751.

19. **Conspiracy**—Unintended Result.—Parties voluntarily acting together in any act resulting in death of another held as guilty of murder as if they had intended the death of the party.—Holmes v. State. Okla., 119 Pac. 430.

20. **Constitutional Law**—Fifth Amendment.—The fifth amendment to the federal Constitution operates solely on the national government.—Quinby v. City of Cleveland, Ohio, C. C., 119 Fed. 68.

21.——Statutes.—All reasonable doubts should be resolved in favor of the constitutionality of a statute, and it should not be declared unconstitutional unless clearly in excess of the General Assembly's powers.—Ex parte Watson, N. C., 72 S. E. 1049.

22. **Contracts**—Public Policy.—A contract between an owner of land and a stockholder in a bank about to be organized for the payment of a commission to the stockholder for securing a prospective sale of land to the bank held void as against public policy.—Dieckmann v. Robyn, Mo., 141 S. W. 717.

23.——Specific Performance.—The test of the sufficiency of a contract describing land is whether specific performance can be had according to its terms.—Red Star Coal Co. v. Graves, Ala., 56 So. 596.

24. **Convicts**—Revival of Action.—Where an action is commenced by the trustee of the estate of a person confined in the penitentiary, revivor in her name on her restoration to civil rights by a pardon is not authorized by law.—New v. Smith, Kan., 119 Pac. 380.

25. **Copyrights**—Essentials of.—Protection under the copyright law is granted only to those who perform the conditions essential to a perfect copyright title.—Louis Dejonge & Co. v. Breuker & Kessler Co., C. C. A., 191 Fed. 35.

26. **Corporations**—Authority to Sue.—President of corporation, suing in corporate name, held under burden of alleging and proving authorization from board of directors.—Pardee Co. v. H. Alfrey Heading Co., La., 56 So. 660.

27.——Public Service.—It is not against public policy for public service corporation to contract to give an employe permanent employment.—Louisville & N. R. Co. v. Cox, Ky., 141 S. W. 389.

28.——Separate Entity.—To do justice, equity held authorized to disregard the fiction of a corporation's separate entity.—C. S. Goss & Co. v. Goss, 132 N. Y. Supp. 76.

29.——Stock Purchase.—An agreement to repurchase stock, which was the inducement to plaintiff to purchase the stock, held based on a sufficient consideration.—Mulliken v. Haseltine, Mo., 141 S. W. 712.

30.——Waiver.—A corporation buying a press subject to an agreement that it might be returned, if unsatisfactory, by giving a mortgage thereon to its president, did not accept the same as satisfactory as a matter of law.—Harrison v. Scott. N. Y., 96 N. E. 755.

31. **Criminal Law**—Motion in Arrest.—The failure of the state to show that the offense of unlawfully manufacturing spirituous liquors was committed within two years should be taken advantage of by accused by a requested instruction, and is not available on motion in arrest.—State v. Francis, N. C., 72 S. E. 1041.

32. **Damages**—Burglary Insurance.—In an action against a burglary insurance company, plaintiff held entitled to recover the damages naturally resulting from negligent acts of defendant in installing a defective electrical appliance.—Silverblatt v. Brooklyn Telegraph & Messenger Co., 132 N. Y. Supp. 253.

33.——Effecting Cure.—One sustaining a personal injury held required to use all reasonable means within his power to effect a cure.—Lobban v. Wabash Ry. Co., Mo., 141 S. W. 440.

34.——Humiliation.—Where a bathing house proprietor has sold a ticket to a person, the purchaser may recover damages for an improper and humiliating expulsion after the revocation of the license given by the ticket.—Aaron v. Ward, N. Y., 96 N. E. 736.

35.——Mitigation.—Mitigation of damages is provable under a general denial.—Mug v. Ostendorf, Ind., 96 N. E. 780.

36. **Death**—Damages.—The elements of recovery by a mother for the death of her son held not necessarily limited to support and maintenance.—Valparaiso Lighting Co. v. Tyler, Ind., 96 N. E. 768.

37. **Dedication**—Intent.—A property owner, by building a sidewalk pursuant to ordinance. held to have dedicated the way over which the walk was built to public use as a sidewalk.—City of Bloomfield v. Allen, Ky., 141 S. W. 400.

38. **Deeds**—Delivery.—Possession at the trial of a recorded deed by a person claiming under it is prima facie evidence of delivery.—Vessey v. Dwyer, Minn., 133 N. W. 613.

39. **Depositions**—Conditions as to Taking.—The statute which provides that depositions of witnesses may at the request of defendant be taken when the witness is aged or infirm has no reference to a woman who has been confined in childbirth, and such fact would not render her "infirm."—Davis v. State, Tex., 141 S. W. 264.

40. **Discovery**—Striking Answer.—An answer to an interrogatory should not be stricken out merely because irresponsive, where it is not shown that it was not pertinent.—Rice v. Southern Ry Co., Ala., 56 So. 587.

41. **Divorce**—Adultery.—The mere fact that spouses are living apart will not justify adultery.—Donohue v. Donohue. Mo., 141 S. W. 465.

42.——Connivance.—A husband or wife suspecting the other of adultery may take measures to secure proof to be used in an action for divorce without being guilty of connivance.—Engle v. Engle, Iowa, 133 N. W. 654.

43.——Res Judicata.—An order denying a motion to vacate a divorce decree so far as it applies to property rights is equivalent to a decree on the merits.—Scammon v. Scammon, Wash., 119 Pac. 383.

44. **Easements**—Prescriptive Rights.—Where a way has been established by consent, evidence to substantiate a prescriptive right to continue

the easement must be clear and conclusive.—A. C. Bohrnstedt Co. v. Scharen, Ore., 119 Pac. 337.

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